this regard, Crouch stated "...what I instructed my counsel to do was to file and put on the record everything he felt necessary to put on the record." Tr. 2755. Emphasis supplied. [by Judge Chachkin] Crouch's belated attempt to place the onus on his counsel is not credible and is rejected. ID Findings at ¶65.

85. The Algreg citation by Judge Chachkin has direct application here. Several individuals failed to tell the Commission about facts relevant to the issues in the case, having to do with cellular applicants acting in concert to participate in lotteries. These individuals were experienced in the business of filing and participating in cellular lotteries. The Review Board there held that the individuals could not rely on advice of counsel to excuse their failure to report information which they knew should be reported.

86. In the matter of reliance on counsel, Trinity-NMTV's record in this case is a shambles that supports neither good faith legal advice nor good faith reliance on legal advice as those concepts are used in the cases cited in the comments. Mr. Crouch and Trinity-NMTV were involved in the low power television application process for several years before Mr. May became counsel. Indeed, Mr. Crouch without communications counsel organized the NMTV corporation separate from Trinity two days after the Commission issued a notice proposing to grant minority and diverstiy preferences in the low power television lotteries. ID at ¶¶17-18. With regard to the 12-station rule minority incentive, Mr. Crouch first testified that he told counsel to

report everything to the Commission and it was counsel's fault for not doing so, then he undertook to recant such testimony in a manner which Judge Chachkin deemed unbelievable. On the entire record, Judge Chachkin determined that Mr. Crouch did not rely on counsel for the minority preference programs which Trinity manipulated. Counsel gave testimony that he advised Mr. Crouch that NMTV was eligible for the minority preference, although he did no research on the de facto control laws about which he was not familiar and to which he had approved an exemption which his pre-eminent client wanted to hear, and provided no written opinion on the subject.

87. The cases cited in the comments do not support crediting the client for acting on the advice of counsel under these melancholy circumstances:

(a) In Fox Television Stations, 10 FCC Rcd 8452, 8496-8501 (1995), recon. denied, 11 FCC Rcd 7773 (1996), the applicant certified that it was in compliance with the alien ownership laws in reliance on in-house counsel, a former FCC employee, who in turn obtained a written opinion from outside counsel, which formed the basis for the applicant's course of action. In upholding the client's reliance on the opinion letter, the Commission reviewed that legal analysis, given at the time when the client took the action in question, with great care, stating "Because the full analysis is critical to a complete understanding of the letter, we quote it at length..." 10 FCC Rcd at 8496, quoting the letter at 8497-8498.

(b) In Maness v. Meyers, 419 U.S. 449 (1975), the Court decided that an attorney should not be held in contempt for advising his client to assert a Fifth Amendment right to refuse to produce documents in discovery on grounds of self-incrimination. All of the relevant facts and circumstances had been disclosed to the court below. Counsel's reasoning for his advice was presented in a written motion and also in oral argument before that court. The record showed that the client pleaded the Fifth Amendment based on that advice. While the Court disagreed with that advice on the merits of the case (the self-incrimination defense should be raised at trial, rather than in discovery), under these circumstances, the Court held the attorney's advice was given in good faith and the client had acted on that advice in good faith.

(c) In In re Watts, 190 U.S. 1 (1903), the Court decided that an attorney should not be held in contempt for advising the client to disobey an order by a federal bankruptcy court when, to comply with that order, the client would have disobeyed an order by the state bankruptcy court. As in Maness, all of the relevant facts and circumstances were disclosed to the court below, the legal basis for the advice was presented and argued to that court, and the record reflected that the client acted on that advice.

(d) In Kleiner v. First Nat'l Bank, 751 F.2d 1193 (11th Cir. 1985), Circuit Judge Hill concurring in part and dissenting in part, a majority of the court took punitive action against

both the client and its counsel in a class action lawsuit involving the issue of solicitation of potential members of the class to join (or not join) in the class action. The court ordered that contacts of such potential members should be limited to certain types of discovery. Counsel, based on a weekend of research but no opinion letter, advised the client to circumvent the order and contact a large number of potential members in secret without disclosure to the court. When this conduct surfaced, the court penalized the client by reducing its discovery rights, and ordered that counsel be disqualified from representing the client and be held in contempt. When the case was decided on appeal, the lawsuit had been settled, and the issue before the court was the sanction against counsel. On the facts, the majority held that counsel's action could not be condoned and upheld the sanctions; the concurring and dissenting opinion believed that the court's discovery order below had not been sufficiently clear to warrant sanctions against counsel.

88. In the case of Trinity-NMTV -- however the culpability may have been as between the client and counsel -- the end result is that the client did not provide a report of the full facts and circumstances to the Commission which the client knew should have been done and, without such disclosure, the client perpetrated a massive abuse of the minority incentives beginning in the early 1980's which did not abate until the whistle was blown on the client's misconduct in the early 1990's.

B.
There is no Federal Register Act issue in this case
(comments at 3-4)

89. The Commission has complied with the Federal Register Act, 44 U.S.C. §§1501 et seq., as pertinent to this case. The de facto control regulation, which is still in force, has been published in the Federal Register repeatedly throughout the years commencing in 1940, 5 F.R. 2382, 2384, n. 6, only five years after the Federal Register Act itself became law, 49 Stat. 501 (July 26, 1935). So have other elements of the multiple ownership regulations including the 1985 amendment to which Trinity and counsel have attached so much misplaced significance. Kennecott Utah Copper Corp. v. United States Dep't of Interior, 88 F.2d 1191, 1205 (D.C.Cir. 1996) and the quotation from the opinion, comments at 3, n. 3, related to failure to publish a governing document in the Federal Register. Here, the problem of Trinity-NMTV is not the failure to publish, or lack of notice of, the Commission's regulations. Here, the problem of Trinity-NMTV is their abuse and violation of those regulations.

C.
Trinity and counsel absymally fail their own so-called "reasonable applicant" standard
(comments at 3-4)

90. The comments employ the phrase, a "reasonable applicant" standard from a reading of the Fox Television case, and measure that standard regarding the "...duty of an applicant to be fully forthcoming as to all facts and information relevant to its application, relevant information being information that may be of decisional significance." Trinity and counsel then

argue that they met that standard. Who are they kidding? Mr. Crouch himself recognized that all of the facts and circumstances, "everything" to use his repeated word, should have been provided to the Commission regarding this new regulatory concept in order to obtain a ruling concerning NMTV's eligibility for filing. Instead, the applications and conversations with the staff reflected the benign tip of the iceberg while the huge mass of domination of NMTV and manipulation of the minority preferences was kept below the surface and not disclosed. Had what is described in part III, supra, been disclosed, NMTV's eligibility would have been blown out of the water, so to speak, from the very outset. That is why full disclosure could never had been made under the Trinity-NMTV scheme.

D.
The Fox Television decision
(comments at 4)

91. The comments, in a single sentence, say that the circumstances here are "indistinguishable" from the Fox Televsion case, but then do not explain how that conclusions is reached. We can think of at least three distinctions between the conduct of Mr. Murdoch there and the conduct of Mr. Crouch here. One, the applicant in the Fox Television case hired an FCC attorney as in-house counsel and then obtained a written opinion by outside counsel concerning the correct legal position before it took action based on that legal position, and from which the legitimacy of that legal position could be judged years later when the case was adjudicated. Here, counsel disregarded an

enormous body of precedent concerning the de facto laws, but nonetheless conceived the first and only exception to those laws in 60 years of their history, although that legal position was not reflected in any written opinion by which its legitimacy at the time the client acted upon it could be judged years later when this case was adjudicated. Two, the applicant in the Fox Television case involved a party, Mr. Murdoch, who had created his own birthright and the argument was over certain legal questions about nonvoting stock reporting and other financial matters. Here, the applicant involves a party, Mr. Crouch, who manipulated the minority preferences for the purpose of taking a birthright which belonged to others. Three, in the Fox Television case, the applicant established by legal opinion and other means the basis for its determination of what matters were, or were not, disclosed. Here, Mr. Crouch conceded that a vast array of facts and circumstances should have been disclosed, but were not.

E.
Statements of Chairman Fowler,
Commissioner Rivera and former Chairman Wiley
(comments at 17)

92. All three of the citations to such statements are in error, obviously attempting to create a false impression that statements by these Commission members somehow or other support the cause of Trinity-NMTV and its counsel.

93. Chairman Fowler. The citation to statements of Chairman Fowler is disingenuous. The same disingenuous tack was taken by Trinity in its motion to vacate the record, etc., where,

by "cropping" words out of context, Trinity argued that Chairman Fowler agreed with Commissioner Patrick's statement that minorities need have no role in programming or station operations. When the statement is read in context and in relation to Chairman Fowler's published views to which he referred in the statement, it is clear that Chairman Fowler was agreeing with the principle espoused by Commissioner Patrick that the Commission should not use its licensing processes to provide minority preferences at all; that Chairman Fowler was not agreeing with the comment by Commissioner Patrick about the methodology of this particular incentive. Glendale demonstrated this in its opposition to Trinity's motion, at 29-34. With Glendale's opposition available to Trinity-NMTV and its counsel, it is a disservice to the Commission and its staff, who study these pleadings in preparation for the Commission's decision, for Trinity-NMTV and its counsel to again miscite the statement of Chairman Fowler as a matter of fact without even a reference to the evidence to the contrary.

94. Commissioner Rivera. Trinity-NMTV and its counsel ascribe to Commissioner Rivera an acknowledgement that an exemption had been created as Commissioner Patrick stated, and then say Commissioner Rivera disagreed with that exemption. What are Trinity-NMTV and its counsel reading? The full statement of Commissioner Rivera is appended as Exhibit 1. He disagreed with Commissioner Patrick's objection to granting minority incentives in principle. He made no statement regarding the comment of

Commissioner Patrick about the methodology of this particular incentive. Four months later, Commissioner Riviera did have something to say on that subject, describing the incentive as allowing funding sources to have a corporate position and seat on the board, with no reference to an exemption from the de facto control laws or allowing minorities with more than 50% ownership to abdicate their control over programming and station operations. A copy of this statement of Commissioner Rivera is attached as Exhibit 2.

95. Former Chairman Wiley. The comments at 17, n. 13 quote a sentence from a lengthy overview of Commission regulatory programs in which he uses the phrase "ownership" in describing efforts to achieve diversity in ownership of broadcast stations, and the comments then seek to draw some support for the cause of Trinity-NMTV and its counsel, although the effort is too obscure to understand. The passage, if quoted in full, shows that Chairman Wiley used "ownership" in referring to the minority incentive in the multiple ownership rule in precisely the same way he used "ownership" in referring to the other aspects of the multiple ownership rule sans any reference to a radical change in the de facto control laws for this particular part of the rule. His statement is this:

> Ownership Rules. The FCC has adopted a number of rules designed to promote diversity in the ownership of the media of mass communications. Those with certain broadcast station interests may not acquire a broadcast station, daily newspaper, or cable television system providing service with the same area.
>
> Recently adopted rules raised the ceiling on nationwide

> ownership interests to 12 stations for AM and FM radio. With respect to television, entities may acquire as many as 12 stations provided they reach no more than 25 percent of the national audience, as determined by Arbitron ADI market rankings of the percentage of national television households in each market. Because of UHF signal limitations, the FCC will attribute only 50 percent of a market's ADI rank to UHF owners for purposes of calculating audience reach. The FCC also extended the limit on television station ownership to 14 if each station over the 12-station limited is minority-controlled. Entities with cognizable ownership interests in minority-controlled television stations will be allowed a 30 percent audience cap. (Minority control occurs if minorities hold a greater than 50 percent ownership interest. Rules took effect April 2, 1985. The FCC's rules formerly prohibited ownership of more than seven AM stations, seven FM stations, or seven television stations (no more than five of which might be VHF).

Richard E. Wiley, The Media and The Communications Revolution: An Overview of the Regulatory Framework and Developing Trends, 231 PLI/Pat 421, 457-458 (Prac.L.Inst. November 13, 1986) [footnotes omitted] [emphasis added].

F.
"Control" provisions in other FCC regulatory programs
(comments 20-22)

96. The control provisions in other regulatory programs are irrelevant to the issues here. They surely did not serve to confuse Trinity-NMTV and its counsel relative to the control provisions pertaining to broadcast stations. Nor do they add to the relevant analysis of the broadcast control provisions in this proceeding.

97. Most of the rule citations involve auctions or related matters arising under legislation by Congress: §1.2110 (relative to competitive bidding for the Interactive Video Data Service, Marine Public Coast Stations, MDS and MMDS, Exclusive Private

Carrier Paging above 900 MHz, Public Mobile Services, Specialized Mobile Radio Service, Personal Communications Services and General Wireless Communications Service;[11] §20.6 (spectrum limit on aggregate holdings in various of these services); §24.320 (relative to "narrowband" PCS auctions); and, §24.709 and §24.720 (relative to "broadband" PCS auctions).

98. The auctions under these regulations and related statutory provisions[12] involve preferences for various parties including minorities, women, small business and small telephone companies. They also involve billions of dollars. The Commission developed highly detailed provisions to guard against parties who were eligible for preferential treatment fronting for other parties providing huge sums of money. In that grid of provisions, the Commission established a comprehensive outline of elements to preserve control in the parties receiving the preference. An associated grid of detailed provisions dealt with limits on aggregations of spectrum that could be held by a party cutting across various of the services. The adoption of such detail in this setting has no bearing on the broadcast de facto control laws developed throughout the years and the activities of Trinity-NMTV and its counsel in relation to those laws.

99. Rule 76.934 was adopted pursuant to the Cable Reform Act of 1992 which specified certain relief under rate regulation for "small cable companies." 47 U.S.C. §423(m). Both the

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[11] 47 C.F.R. §1.2102.

[12] 47 U.S.C. §309(j) and §322.

statute and the regulation contain several "bright line" provisions including "1% of cable subscribers in the United States," "companies with more than $250 million annual revenues," "cable systems with no more than 1,000 subscribers" and "cable companies with more than 400,000 subscribers." With the obvious need for such bright line provisions to implement a regulatory scheme nationwide applicable to thousands of cable systems and their franchising authorities, the regulation provided for added rate regulation burdens for a small cable system if a larger company owns more than "20% of its equity" or has "de jure control."

100. Throughout the 60 year history of the de facto control laws, the Courts and the Commission have consistently recognized that determinations of de facto control require examination of the entire factual mosaic, and do not lend themselves to bright line tests. ¶¶18-31, 50-52, supra. No reasonable attorney, who considered and studied the de facto control laws, could have believed that the Commission introduced any bright line test sub silentio without discussion of such a radical departure from the consistent concern which the Commission has had about the parties who own and control broadcast stations throughout the entire period of the agency's existence. The argument on this score in the comments at 24-25 is nonsense. If Trinity-NMTV and its counsel considered and studied the de facto control laws, they could not have arrived at such a conclusion in good faith. If Trinity-NMTV and its counsel did not consider and study the de

facto control laws, they could not have arrived at any reasoned conclusion in good faith.

101. The only other citation, §61.171, relates to when a telephone tariff must be amended to substitute a new party as the carrier identified in the tariff. In this setting, the use of the phrase "operating control," although consistent with the broadcast de facto control laws, has no bearing on those laws or the activities of Trinity-NMTV and its counsel in question here.

G.
Groundrules for construing and interpreting statutes and regulations
(comments at 9-16)

102. The groundrules for construing and interpreting statutes (and regulations) start with the language of the statute or regulation to determine if the meaning is clear on its face. E.g., United States v. Public Utilities Comm'n., 345 U.S. 295, 315 (1953). Trinity-NMTV and its counsel take the position that it is clear that the reference to "ownership" in preference programs for "minority-controlled" licensees overruled the provision under the multiple ownership regulations dating back to 1940 that "control" means de facto control as well as de jure control; and that this clarity was so discernible on the face of the regulation that counsel for Trinity-NMTV could determine that an exemption to the de facto control laws had been created, shooting from the hip without any review of those laws and without recording any legal analysis in writing.

103. Squarely to the contrary, the only sensible reading of the provision is that in order to qualify for the full power

preference program for minority-controlled licensees, the minorities must own at least 51% of the stock, leaving the de facto control portion of the regulation in place to protect licensing under the program from any unauthorized abdication or transfer of control to unapproved parties such as any of the expanded funding sources which the incentive was designed to attract. This understanding was reflected in the action of the Commission in designating the hearing issue and it is reflected in the Initial Decision of Judge Chachkin.

104. The groundrules for construction and interpretation on which Trinity-NMTV and its counsel rely, i.e., that (a) specific provisions have precedence over general provisions and (b) the word "means" is more restrictive than the word "includes," may be useful in appropriate cases, but are not in this one. Ignored by Trinity-NMTV and its counsel are overriding groundrules that (a) all of the provisions of a statute or regulation should be given effect and brought into harmony if possible and (b) the statute or regulation should be interpreted in light of the entire statutory or regulatory scheme and purpose. Some examples follow:

105. In United States v. Public Utilities Comm'n., supra, involving interpretation of a provision of the Public Utility Act of 1935, the Court stated:

> Where the language and purpose of the questioned statute is clear, courts, of course, follow the legislative direction in interpretation. Where the words are ambiguous, the judiciary may properly use the legislative history to reach a conclusion. And that method of determining Congressional purpose is likewise applicable when the literal words would

> bring about an end completely at variance with the purpose of the statute.

295 U.S. at 315.

106. In Philbrook v. Glodgett, 421 U.S. 707 (1975) involving interpretation of a provision of the Social Security Act relative to the Aid to Families with Dependent Children program, the Court stated:

> "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy," quoting from United States v. Heirs of Boisdore, 8 How. 113, 122 (1849).

421 U.S. at 713.

107. In T.W.A. v. Civil Aeronautics Board, 336 U.S. 601 (1949) involving interpretation of a provision of the Civil Aeronautics Act of 1938, the Court stated:

> Yet, unless we found a congressional purpose to make a radical break with tradition, we would be most reluctant to give the "make effective" clause the broad meaning which petitioner urges.

336 U.S. at 605.

108. In United States v. Menasche, 348 U.S. 528 (1955) involving interpretation of a provision of the Immigration and Nationality Act of 1952, the Court stated:

> The whole development of this general savings clause, its predecessors accompanying each of the recent codifications in the field of immigration and naturalization, manifests a well-established congressional policy not to strip aliens of advantages gained under prior laws.

348 U.S. at 535.

109. In Clark v. Uebersee Finanz-Korp., 332 U.S. 480 (1947) involving interpretation of a provision of the First War Powers

Act of 1941 amending the Trading With the Enemy Act of 1917, the Court stated:

> Yet if the question were presented for the first time under the amended Act, we could not confine the statutory definitions of enemy or ally of enemy to the narrow categories indicated in [citation omitted]. To do so would be to run counter to the policy of the Act and be disruptive of its purpose. Our task is to give all of it -- 1917 to 1941 -- the most harmonious, comprehensive meaning possible. [citation omitted]

332 U.S. at 488.

110. The "minority ownership" language in the low power television lotteries and in the minority-controlled full power television rule change stemmed from the will of Congress that these preferences be created for an applicant who is "controlled by a member or members of a minority group."[13] Congress made crystal clear its desire for real and meaningful minority programs and it directed the Commission to take steps to make sure that the applicants seeking the minority preferences were the real parties in interest. Citations and analysis in ¶¶33-39, supra. This reflects Congressional awareness of the fundamental public interest concept in the nation's communications laws that only parties approved by the Commission may be the trustees of the broadcast air waves.

111. In neither the low power television lottery program

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[13] Public Law 97-259, September 13, 1982, 96 Stat. 1087, codified in 47 U.S.C. §309(i)(3)(A). This statute was adopted to establish lotteries for low power television stations with preferences for minorities and parties without other broadcast holdings. The minority-controlled incentive regarding full power television stations was adopted following pressure by Congress which arose from the same loins as the lottery statute.

nor the minority-controlled full power television program did the Commission ever give any indication that its actions were intended to uproot 60 years of de facto control laws critical to the public interest selection of broadcast licensees. In the low power television lottery program, the Commission required a "real party-in-interest" certification backed up by warnings that a false certification would result in disqualification. ¶¶36-38, supra. In the minority-controlled full power television program, in which the Commission permitted funding parties to hold corporate office and board positions, it stated the purpose was to encourage financing of minority ventures by allowing the financiers an opportunity to protect their investments, ¶¶45-49, supra, a concept that the Commission has applied in adjudications under the de facto control laws, ¶49, supra. The Commission did not adopt the dissent by Commissioner Patrick nor did it say the minority owners of more than 50% may abdicate control of their station's programming and operations to the investors, or any words even arguably to that effect.

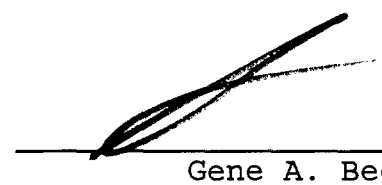
112. In this milieu, the Commission's use of the words "more than 50% minority owned" to mean "minority-controlled" simply meant that minorities must have at least 51% of the stock in order for the licensee to be minority-controlled, that it would not be minority-controlled with a lesser percentage of stock ownership. The rule's safeguard against abdication of control by the minorities or assumption of control by financiers remained in place as it always has. This is the plain meaning of

the regulation read as a whole. And, the regulation thus read as a whole fulfilled the purpose of Section 310(d) of the Act and the multiple ownership rule itself, to place the ownership and control of the nation's broadcast stations only in parties approved by the Commission.

VII.
Conclusion

113. The comments are a repetition and rehash of multiple previous filings which add nothing of substance. The Commission should proceed with a Final Decision upholding the Initial Decision of Judge Chachkin.

Respectfully submitted,



Gene A. Bechtel

Bechtel & Cole, Chartered
Suite 250, 1901 L Street, N.W.
Washington, D.C. 20036
Telephone 202-833-4190
Telecopier 202-833-3084

Counsel for Glendale
Broadcasting Company

December 17, 1996

EXHIBIT 1

not the color of skin, but diversity.

In fact, Mr. Chairman, I think such a system would be more effective in terms of facilitating minority ownership for a number of reasons, one of which is that I would suggest that we have less rigid requirements in terms of ownership, for instance. Fifty one percent, I am afraid, is a requirement that may preclude or defeat the effectiveness of this program. I will be issuing a separate statement in which I will go into that a little bit further. Thank you for your time, Mr. Chairman.

Chairman Fowler: Thank you very much, Commissioner Patrick, for those comments. Are there other comments here? Commissioner Rivera.

Commissioner Rivera: Yes, thank you, Mr. Chairman. I guess I disagree with you, Commissioner Patrick. I think that while our multiple, our minority ownership policy was certainly developed well after 1953, I think that there are -- those policies are rooted in the same diversity considerations as are our national multiple ownership rules -- diversification in broadcast ownership and content. I think it is, therefore, altogether fitting that in this first revision of the multiple ownership rules since 1953 that the Commission incorporate its minority ownership objectives into the new rule.

Although our rule, the multiple ownership rule,

is certainly not the primary vehicle for promoting minority ownership, the two objectives I think are interrelated, and therefore I think it's most appropriate that we do have the minority ownership incentive in this particular rule. And I certainly am behind the item, Mr. Chairman. I, too, would like to commend you for your leadership in forging a consensus here, and I will be voting for the item. I will have a separate statement.

Chairman Fowler: Thank you, Commissioner Rivera. Are there any other comments on this item? Well, I think everything has been said that could be said. I will just thank -- first of all, you took the words out of my mouth, Commissioner Dawson, because I had written down two names here, Tom Hurwitz and Ray Strassburger, without whose help we could not have fashioned and hammered out this consensus. I want to thank Jim McKinney and the Mass Media Bureau for doing an excellent job on this item on a very compressed time schedule. You're to be congratulated as well.

Mr. McKinney: Laurel Bergold and Mike Metzger, as well as David Donovan, sir.

Chairman Fowler: Well, I am delighted you've recognized them as well. I do want to make it clear that as Commissioner Dawson said, this is certainly not a perfect package from my standpoint, as I suspect from

EXHIBIT 2

June 7, 1985

SEPARATE STATEMENT

OF

COMMISSIONER HENRY M. RIVERA

RE: Notice of Proposed Rulemaking Reexamining Single Majority Stockholder and Minority Incentive Provisions of Rule 73.3555

I am pleased that the Commission has begun this rulemaking. The minority ownership incentive adopted by the Commission's 12 station reconsideration decision 1/ can give a much-needed boost to the flagging involvement of minorities in broadcasting. That was certainly our intent in adopting the incentive (as well as the intent of the House and Senate legislative proposals on which the December 1984 reconsideration was based). As this Notice of Proposed Rulemaking explains, however, our attribution rules -- specifically, the single majority stockholder provision -- may indirectly undermine or defeat this minority incentive. To avoid taking away with the attribution rules what the Commission intended to give with the 12 station reconsideration order, it is essential that we examine the interplay of these rules. 2/

The Notice has described the potential conflict between these rules. Both provisions relieve holders of 49 percent interests in broadcast licenses from our multiple ownership rules. Unlike the minority ownership incentive, however, the single majority stockholder rule does not limit who may hold the remaining 51 percent interest to minority group members. In addition, the single majority stockholder rule can be used to avoid any broadcast multiple ownership restriction and to acquire large interests in an unlimited number of properties, while the minority incentive applies only to the 12 station rule, and only allows parties to acquire two stations or five percent viewer penetration more than the limits contained in that rule. The minority incentive does have some advantages over the single majority stockholder rule -- for example, it exempts officers and directors from attribution where its standards are otherwise met. Nevertheless, the relief provided by the single majority stockholder rule to broadcast investors is significant and, in some ways, far superior to that offered by the minority ownership provision. Consequently, there is a

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1/ Memorandum Opinion and Order in General Docket No. 83-1009, FCC 84-638 (released Feb. 1, 1985).

2/ See id. at note 60 and Separate Statement of Commissioner Henry M. Rivera Concurring in Part, Dissenting in Part, at nn. 17-19 and accompanying text.

substantial question as to whether the minority ownership incentive will provide the positive inducement the Commission intended unless one or both of these rules is modified.

If the comments confirm these tentative views, the Commission has a number of options for remedial action. Deleting the single majority stockholder rule is the most obvious solution. The provision was adopted by the Commission on its own motion, with only a cursory rationale. 3/ It is far from integral to the new attribution scheme adopted last year. 4/ Its repeal would be a small price to pay for preserving the integrity and promise of our new minority ownership initiative. Alternatively, it may be possible to revise the minority incentive to make it more attractive to those seeking relief from our multiple ownership rules. Whatever the proper course, I am satisfied that this proceeding gives us the necessary vehicle for corrective action.

3/ Attribution of Ownership Interests, 97 FCC 2d 997, 1008-09 (1984).

4/ See id.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing OPPOSITION BY GLENDALE BROADCASTING COMPANY TO COMMENTS ON BEHALF OF WOULD-BE INTERVENOR are being served this 17th day of December 1996 on the following:

By first class United States mail, postage prepaid:

Nathaniel E. Emmons, Esq.
Howard A. Topel, Esq.
Mullin, Rhyne, Emmons & Topel, P.C.
Suite 300, 1225 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Trinity Broadcasting of Florida, Inc. and Trinity Broadcasting Network

Kathryn R. Smeltzer, Esq.
Fisher, Wayland, Cooper, Leader & Zaragoza, L.L.P.
Suite 400, 2001 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Counsel for National Minority TV, Inc.

David E. Honig, Esq.
Law Offices of David E. Honig
3636 16th Street, N.W., B-863
Washington, D.C. 20010
Counsel for Spanish American League Against Discrimination

Barbara McDowell, Esq.
Jones, Day, Reavis & Pogue
Metropolitan Square
1450 G Street, N.W.
Washington, D.C. 20005
Counsel for Colby May

By hand delivery:

James Shook, Esq.
Hearing Branch, Mass Media Bureau
Suite 7212, 2025 M Street, N.W.
Washington, D.C. 20554

The Hon. Joseph Chachkin
Administrative Law Judge
Suite 226, 2000 L Street, N.W.
Washington, D.C. 20554

Gene A. Bechtel